

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

International Confections Company, LLC :
: Plaintiff, : **Case No. 2:18-cv-01108-EAS-CMV**
: v. : **Judge Sargus**
Z Capital Group, LLC, et al., : **Magistrate Judge Vascura**
: Defendants. :

RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on February 4, 2019 and was attended by:

Barton R. Keyes, counsel for plaintiff International Confections Company, and
Matthew J. Cavanagh, counsel for defendants Z Capital Group and Z Capital Partners.

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

Preliminary Note: The parties have conferred and agree that it makes sense to stay discovery until the Court rules on defendants' motion to dismiss under Rules 12(b)(2) and 12(b)(6) (ECF #7) (the "MTD"). This would avoid incurring the cost, time, and effort of fact discovery until after the Court decides the threshold questions of whether it has personal jurisdiction over defendants and whether the claim asserted in the complaint was released as part of a purchase agreement. Thus, the parties request a stay of discovery and have proposed case schedule milestones that count from the date of a ruling on the MTD.

1. **CONSENT TO MAGISTRATE JUDGE**

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)?

Yes No

2. **INITIAL DISCLOSURES**

Have the parties agreed to make initial disclosures?

Yes No The proceeding is exempt under Rule 26(a)(1)(B)

If yes, such initial disclosures shall be made by 30 days after a ruling on the MTD.

3. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

X Yes No

If yes, describe the issue: Defendants contest personal jurisdiction as briefed in the MTD.

If yes, the parties agree that any motion related to venue or jurisdiction shall be filed by already filed and fully briefed.

4. PARTIES AND PLEADINGS

- a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed by 90 days after a ruling on the MTD.
- b. If the case is a class action, the parties agree that the motion for class certification shall be filed by N/A.

5. MOTIONS

- a. Are there any pending motion(s)?

X Yes No

If yes, indicate which party filed the motion(s), and identify the motion(s) by name and docket number: Defendants' motion to dismiss, Doc. #7.

- b. Are the parties requesting expedited briefing on the pending motion(s)?

 Yes X No

If yes, identify the proposed expedited schedule: N/A

Opposition to be filed by already filed; Reply brief to be filed by already filed.

6. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand:

Plaintiff contends that the defendants wrongfully induced the improper termination of a lucrative, 17-year license agreement between plaintiff and non-party Mrs. Fields Franchising, LLC. Plaintiff asserts one count, tortious interference with contract. Plaintiff has demanded a jury trial.

Defendants deny any wrongdoing or tortious conduct on their part, and they contend that there is no personal jurisdiction over them in Ohio, the claim asserted in the complaint was released as part of a purchase agreement, and plaintiff has not alleged a plausible case of tortious interference with contract against them.

7. DISCOVERY PROCEDURES

- a. The parties agree that all discovery shall be completed by 9 months after a ruling on the MTD.

The parties agree to schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and to file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so. If the parties are unable to reach an agreement on any matter related to discovery, they are directed to arrange a conference with the Court.

- b. Do the parties anticipate the production of ESI? X Yes _____ No

If yes, describe the protocol for such production:

At this point, the parties anticipate that the electronically stored information subject to discovery will include routine items (such as emails and calendar entries) such that a detailed protocol will not be necessary. That said, depending on the number of emails to be produced, the parties may require a relatively simple ESI protocol to designate the format for ESI production, which would specify the format of files to be produced, whether natives are required, what type of load files, if any, are required, and what metadata fields should be included. Otherwise, should more extensive ESI discovery become necessary, the parties will confer promptly to establish any necessary protocols.

- c. Do the parties intend to seek a protective order or clawback agreement? Yes.

If yes, such order or agreement shall be produced to the Court by 30 days after a ruling on the MTD.

8. DISPOSITIVE MOTIONS

Any dispositive motions shall be filed by 10 months after a ruling on the MTD.

Are the parties requesting expedited briefing on dispositive motions?

 Yes X No

If yes, identify the proposed expedited schedule: N/A

Opposition to be filed by _____; Reply brief to be filed by _____.

9. EXPERT TESTIMONY

- a. Primary expert reports must be produced by 6 months after MTD ruling.
- b. Rebuttal expert reports must be produced by 7.5 months after MTD ruling.

10. SETTLEMENT

Plaintiff will make a settlement demand by August 16, 2019. Defendants will respond by August 30, 2019. The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference during this Court's settlement week. The parties request the following week:

September 2019

In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the beginning of settlement week. The parties understand that they will be expected to comply fully with the settlement week orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

11. RULE 16 PRETRIAL CONFERENCE

Do the parties request a scheduling conference?

Yes, the parties would like a conference with the Court prior to it issuing a scheduling order. The parties request that the conference take place _____ in chambers by telephone.

No, a conference is not necessary; the Court may issue a scheduling order after considering this Report.

12. OTHER MATTERS

Indicate any other matters for the Court's consideration:

Defendants state that they are cooperating in the creation of this Rule 26(f) Report to comply with this Court's orders. Defendants' submitting this report, through counsel, is not a waiver of defendants' personal jurisdiction defense, nor is it consent to personal jurisdiction.

Respectfully submitted,

/s/ Barton R. Keyes
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